

PRESS RELEASE

The CNMC seeks a preliminary ruling on the Framework Agreement for the Dock Work Sector from the Court of Justice of the European Union

- The inquiry suspends the penalty proceedings initiated in November 2017 until the European Court issues a pronouncement.

Madrid, 26 June 2019. The CNMC (National Commission on Markets and Competition) has requested a preliminary ruling from the Court of Justice of the European Union (CJEU) on the Framework Agreement for the Dock Work Sector. This inquiry suspends the penalty proceedings initiated in November 2017.

After [Royal Decree 2/1986](#) the dock work sector benefitted from a special regime that established a reserve capacity, which involved priority and exclusive hiring of workers associated with the port docker management limited companies (SAGEP). The agreement was structured around a collective agreement and cargo-handling companies were required to be shareholders in said management entities. Twenty years later, [CJEU judgement of December 2014](#) declared the Kingdom of Spain to be in non-compliance, deeming this system to contravene the freedom of establishment guaranteed by the Treaty on the Functioning of the European Union.

In order to comply with the judgement, the government passed [RD-Act 8/2017](#), which established full freedom of contract for workers and eliminated the obligation for cargo-handling companies to have a share in the SAGEP. This made it necessary to modify the 4th Framework Agreement signed by Anesco, on behalf of the companies in the sector, and by the trade unions CETM, UGT, CCOO and CIG in July 2013.

The operators and trade unions reached a new agreement (which was issued as a collective agreement). In it, they introduced a number of commercial obligations between operators that went beyond the scope of collective bargaining and the stipulations provided for in the aforementioned RD-Act. The CNMC considered that this might entail a restriction of the right of separation and free competition. As a result, it initiated a disciplinary action ([S/DC/0619/17](#)).

Prior to completion of the administrative process for this action, the government passed [RD-Act 9/2019](#). This regulation may have a retroactive effect, given that it again grants stakeholders the possibility of establishing compulsory subrogation of

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cargo-handling companies for SAGEP personnel through agreements.

In response to this situation, the CNMC submits the following questions to the CJEU:

‘1 - Should Article 101 of the TFUE be interpreted such that agreements between operators and workers’ representatives are prohibited, including under the name collective agreements, when they determine the subrogation of workers associated with the SAGEP by the companies that break away from it and the manner in which the aforementioned subrogation is carried out?’

2 - In the event that the response to the previous question is affirmative, should Article 101 of the TFUE be interpreted as contravening the provisions of domestic law, such as those contained in Royal Decree-Act 9/2019, insofar as it protects collective agreements that impose a certain way of subrogating workers that goes beyond labour matters and generates a harmonisation of terms and conditions of trade?’

3 - In the event that the aforementioned legal provisions are deemed to contravene Union law, should the case law of this Court on the primacy of EU law and its consequences, contained in, among others, the Simmenthal and Fratelli Costanzo judgements, be interpreted as obligating a public law body such as the National Commission on Markets and Competition to render inapplicable the provisions of domestic law that contravene Article 101 of the TFUE?’

4 - In the event that the response to question one is affirmative, should Art. 101 of the TFUE and Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition provided for in articles 81 and 82 of the Treaty, and the obligation to ensure the effectiveness of EU regulations, be interpreted as requiring an administrative authority such as the National Commission on Markets and Competition to impose disciplinary fines and coercive fines on entities that engage in behaviour such as that described?’

The decision to seek a preliminary ruling suspends the penalty proceedings until the CJEU issues a pronouncement.

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